

The Corporation Journal

THE CORPORATION TRUST COMPANY

37 Wall Street, New York.

Affiliated with

The Corporation Trust Company System

15 Exchange Place, Jersey City

Organized 1892

Boston, 53 State Street
(Corporation Registration Company)
Chicago, 112 W. Adams Street
Los Angeles, Title Insurance Bldg.
(The Corporation Company)
Pittsburgh, 1202 Oliver Bldg.

Washington, D. C., 501 Colorado Bldg.
Philadelphia, 1428 Land Title Bldg.
Portland, Me., 281 St. John Street
St. Louis, Federal Reserve Bank Bldg.
Wilmington, 4168 duPont Bldg.
(Corporation Trust Co. of America)

No. 84. Vol. 3.

November, 1918

Pages 281-292

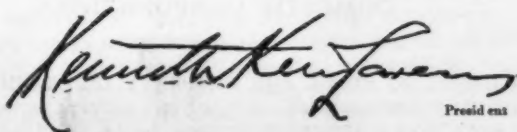
Opening of California Office

WE beg to announce that we have opened an office of The Corporation Company (a subsidiary of The Corporation Trust Company System) in the Title Insurance Building, Los Angeles.

Qualification of Foreign Corporations

REFUSAL of state courts to entertain actions brought and defenses offered by corporations "doing business" without a license, the invalidity of contracts and the menace of statutory fines for failure to qualify have hitherto been said to constitute the "gravest danger to a corporation."

The situation is now further aggravated by cases actually imposing these fines and a holding by the highest court of a great state that the persons connected with an unqualified foreign corporation are personally liable as partners. These cases are reported in this number of the Corporation Journal.



Presided

THE CORPORATION JOURNAL

THE POLICY OF THE CORPORATION TRUST COMPANY IN THE ORGANIZATION, QUALIFICATION, STATUTORY REPRESENTATION AND MAINTENANCE OF CORPORATIONS, IS, TO DEAL EXCLUSIVELY WITH MEMBERS OF THE BAR.

The object of The Corporation Journal is to furnish corporation attorneys, and others interested, with a brief account of current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney upon which he may rely for accuracy and to which he may conveniently refer. Cross references are made to preceding pages and a cumulative index is issued from time to time. The Corporation Journal is mailed each month, without charge, to those who request to be placed upon the mailing list.

THE CORPORATION JOURNAL should be kept in a binder for convenient reference. We furnish a substantial loose-leaf binder for \$1.50.

ANNOUNCEMENTS ON BEHALF OF THE CORPORATION TRUST COMPANY SYSTEM.

CALIFORNIA OFFICE. We beg to announce that we have opened an office of The Corporation Company (a subsidiary of this company) in the Title Insurance Building, Los Angeles.

This office is opened in order to afford the members of the bar on the Pacific Coast the facilities of our company in the organization and qualification of corporations in any state or territory of the United States or in Canada. The well known Income Tax and War Tax Services of The Corporation Trust Company System may be obtained through this office.

The new office is under the management of Mr. J. Disbrow Baker who our many friends will recognize as manager of our Philadelphia Office. Mr. Baker brings to California his experience of over fifteen years in the service of The Corporation Trust Company System in New York, New Jersey and Philadelphia Offices.

PHILADELPHIA OFFICE. Mr. Joseph P. Murray has been elected Secretary in charge of the Philadelphia office to succeed Mr. J. Disbrow Baker. Mr. Murray needs no introduction to our many friends in Philadelphia, where he has so ably assisted the manager of that office for upwards of ten years.

DOMESTIC CORPORATIONS.

KENTUCKY.

ISSUANCE OF STOCK FOR PROPERTY OR SERVICES. Services in negotiating two contracts is held not to be legally sufficient payment for 51 per cent. of the capital stock of a certain corporation. Section 193 of the Kentucky Consti-

tution provides that "no corporation shall issue stocks or bonds except for an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and neither labor nor property shall be received in payment of stocks or bonds at a greater value than the market price at the time such labor was done or property delivered, and all fictitious increase of stock or indebtedness shall be void." The United States Circuit Court of Appeals for the Sixth Circuit says: "This constitutional provision is re-enacted by Section 568 of the Kentucky statutes. In *Altenberg v. Grant*, 85 Fed. 345, 29 C. C. A. 185, this court, in an opinion by Judge Taft, construed this constitutional provision as forbidding the issue of stocks and bonds in exchange for work or property except when the market price of the labor or property shall be equal to the par value of the bonds or stock exchanged," expressly rejecting the contention that the purpose of the section is fulfilled 'if it appears that the work done or property delivered is equal to' the market price of the stock to be issued. This decision has never been overruled or criticized in this court, nor has it been criticized by the Court of Appeals of Kentucky, which, so far as we are advised or have been able to find, has never passed upon the specific provision of the section involved here." *Detroit-Kentucky Coal Co. v. Bickett Coal & Coke Co.*, 251 Fed. 542.

MICHIGAN.

DIVISION OF PROFITS WITH MANAGER. A corporation engaged in the business of purchasing and selling fish and fish products had the right in employing a manager to contract that he should receive half of the net profits of the business. *Moore v. Andrews*, 168 N. W. 1037.

NEW YORK.

PAYMENT OF CAPITAL SPECIFIED IN CERTIFICATE OF INCORPORATION AS A CONDITION PRECEDENT TO COMMENCING BUSINESS OR CREATING AN INDEBTEDNESS. The certificate of incorporation of the Hudson Hotel Company provided for \$1,250,000 of preferred stock and \$1,750,000 of common stock and also that \$1,000 was the amount of capital with which the corporation should begin business. Prior to the time of receiving this \$1,000, the corporation had no right to purchase real estate to employ architects, solicitors for stock subscriptions or to borrow money to pay upon an option. "Until the \$1,000 is actually paid in, in money or property, the company is a mere paper corporation without the capacity to incur any debt." *Whalen v. Hudson Hotel Co.*, 183 N. Y. App. Div. 316.

EFFECT OF PROVISION IN CERTIFICATE OF INCORPORATION ATTEMPTING TO LIMIT RULE DISQUALIFYING VOTE OF AN INTERESTED DIRECTOR. A certificate of incorporation contained this provision: "In the absence of actual fraud, no contract made or other action taken by the concurrent votes of a majority of the entire number of directors shall be invalid

or voidable by reason of the fact that, some or all of the directors are interested, nor shall any director be incapacitated from voting upon any such contract or with respect to any such action by reason of such interest." The Appellate Division, Third Department, holds that this clause "does not help out" a transaction by which incorporators and subscribers passed a resolution that in the opinion of the directors, rights secured by the promoters were worth \$1,750,000 and that full-paid common stock be issued therefor. "We need not discuss the effect of this clause in the articles of incorporation. It can have no such force as is claimed for here, and if it could affect such transactions as we are discussing it would clearly be against public policy and without force." *Whalen v. Hudson Hotel Co.*, 183 N. Y. App. Div. 316.

ISSUE, TRANSFER AND REGISTRATION OF STOCK.

UNITED STATES.

TRANSFER OF SHARES BY ALIEN PROPERTY CUSTODIAN. An appropriation bill passed by Congress and approved by the President on November 4, 1918, known as Public Bill No. 233, contains some amendments of the "Trading with the Enemy Act" referring to property belonging to or held by an enemy or an ally of an enemy. The following new provision has been made:

"Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

The object of the foregoing provision is to enable the Alien Property Custodian to secure certificates of stock in corporations in the place of stock owned by an alien enemy the certificates for which he has been unable to secure.

FOREIGN CORPORATIONS.

MISSOURI.

FINE OF \$1,000 IMPOSED FOR FAILURE TO QUALIFY. The Missouri Supreme Court affirms the judgment of the Circuit Court for Cole County which imposed a fine of \$1,000 on a foreign construction company for failure to comply with the statutes requiring qualification. *State v. Arthur Greenfield, Inc.* 205 S. W. 619. A previous imposition of a \$1,000 fine is reported in the case of *State ex rel. Nelson v. S. P. Pond Co.*, 135 Mo. App. 81.

PARTNERSHIP LIABILITY OF PERSONS CONNECTED WITH AN UNQUALIFIED FOREIGN CORPORATION. The Supreme Court of Missouri says that "it has been long settled in this court that every business transaction and contract made in this state by a foreign corporation which has not been admitted to do business in this state is absolutely void. This declaration stands upon the foundation that there is no corporation in this state until it has complied with the conditions of our statute which confers the corporate capacity within the limits of our governmental jurisdiction. There-being no corporation, the persons assuming to transact business in this state in the corporate name are partners with respect to personal liability." *Booth v. Scott*, 205 S. W. 633.

GENERAL CONSTRUCTION WORK IS DOING BUSINESS so as to require qualification by a foreign corporation. *Arthur Greenfield, Inc.*, is engaged in the business of razing and improving buildings and general construction, and in building fireproof ceilings, partitions, elevators and dumb-waiter shafts, etc. The State Supreme Court says: "In the very nature of things the business of the company engaged in such construction must of necessity be fixed and local where the work is done. It might as well be contended that a farmer is engaged in interstate commerce because he imports his seed and machinery used on the farm from another state as to say that this defendant is engaged in interstate commerce because it imported some or all of the materials it used in the construction of concrete work mentioned in the record. Such shipments are purely incidental to the real business of the company; in the very next contract it obtains it may not be necessary to import a pound of material from another state." *State v. Arthur Greenfield, Inc.* 205 S. W. 619.

TEXAS.

LOSS OF RIGHT TO SUE BY FAILURE TO QUALIFY. An Oklahoma corporation engaged in buying grain and cotton seed in Texas because of its failure to qualify under the Texas foreign corporation laws cannot sue its agent in the state. *Billingslea Grain Co. v. Howell*, 205 S. W. 671.

TAXATION.

NEW YORK.

TRANSFER TAX ON STOCK. Do stock transfer taxes accrue upon the cancellation and surrender of a stock certificate standing in the name of an accom .

THE CORPORATION JOURNAL

modation holder and the making out of a new certificate in the place thereof in the name of another accommodation holder and the indorsement of the new certificate in blank by him, the actual ownership of the stock at all times remaining in the same person? Yes, says the majority of the Appellate Division, Third Department. As there were two transfers of the legal title, two taxable transfers accrued. A tax should be paid upon each transfer. "The application of any other rule would be opposed to the plain wording of the statute and furnish in many cases an easy method of evasion of the tax." *Travis v. Ann Arbor Co.*, 180 N. Y. App. Div. 799.

UNITED STATES.

EXEMPTION OF LIBERTY BONDS. Liberty bonds, declared exempt from taxation by the statute under which they are issued, are illegally taxed when included in placing a value upon stock of a bank which owns the bonds, under Code Supp. Iowa, 1913, section 1922. The United States District Judge for the Southern District of Iowa says: "I cannot but feel that a tax upon the value of a share of stock, which share has its value wholly or partially because the corporation which issued the stock has purchased and holds bonds of the United States specifically exempted from taxation by the state, is contrary to the letter of the act of Congress and the spirit which underlies such enactment. Especially it is difficult to reconcile such an assessment with such an exemption where, as under the legislation of Iowa, the assessor consciously, knowingly, takes into consideration, in fixing such value, the bonds reported by the corporation to be exempt from taxation." *Iowa Loan & Trust Co. v. Fairweather*, 252 Fed. 605.

INCOME TAX.

COMBINATION SUBSCRIPTION PRICES TO OUR INCOME TAX AND WAR TAX SERVICES IN EFFECT NOVEMBER 1, 1918, are as follows: Income Tax Service, for 1918 only, \$15; for both 1918 and 1919, \$30; War Tax Service, for 1918 only, \$15; for both 1918 and 1919, \$30; both services for 1918 only, \$25; for 1918 and 1919, \$60. Services for 1919 only \$25 each or \$45 for both.

For preceding references see 3 Corporation Journal, page 276.

A decision by the Circuit Court of Appeals, Second Circuit, holds that a debt forgiven is not income to the debtor. (p. 665.)

The United States District Court for the Northern District of Ohio holds that the identity of income received by a partnership is not lost on distribution to the partners. (p. 667.)

A letter by a Deputy Commissioner relates to refund of taxes paid on account of stock dividends under Revenue Acts of 1916-1917 in event such taxes are hereafter held to have been erroneously assessed. (p. 671.)

THE CORPORATION JOURNAL

(NOTE.—The page references are to our Income Tax Service, 1918, wherein the foregoing rules and regulations are reported in full.)

FEDERAL ESTATE TAX.

For preceding references see 3 Corporation Journal, page 277.

A treasury decision holds that the time of notification to an executor of the amount of "excess" estate tax due is the date on which notice thereof is received by the executor. (p. 80.)

A treasury decision relates to conditions under which taxes on real and personal property and on income are deductible in computing the net estate of a decedent for purposes of taxation under Title II of the Act of September 8, 1916. (p. 81.)

A treasury decision pertains to shares of stock in domestic corporations belonging to a non-resident decedent and deposited with the British Treasury. (p. 82.)

(NOTE.—The page references are to our War Tax Service, 1918, wherein the foregoing are printed in full.)

EXCESS PROFITS TAX.

For preceding references see 3 Corporation Journal, page 277.

A treasury decision relates to exemption of interest on Liberty Bonds held or subscribed for by trustees, partnerships and corporations under supplement to the Second Liberty Bond Act. (p. 332.)

Telegrams to and from the Commissioner relate to averaging indebtedness over the year for the purpose of adjusting invested capital. (p. 334.)

(NOTE.—The page references are to our War Tax Service, 1918, wherein the foregoing are printed in full.)

CAPITAL STOCK TAX.

No rulings or regulations have been issued since our last report. See 3 Corporation Journal, page 260.

STAMP TAXES.

No rulings or regulations have been issued since our last report. See 3 Corporation Journal, page 260.

THE CORPORATION JOURNAL

WAR EXCISE TAXES.

No rulings or regulations have been issued since our last report. See 3 Corporation Journal, page 261.

UTILITIES AND INSURANCE.

No rulings or regulations have been issued since our last report. See 3 Corporation Journal, page 261.

FEDERAL RESERVE.

For preceding references see 3 Corporation Journal, page 277.

Informal rulings of the Board relate to paper covering sale of agricultural instruments (p. 693), to right to alter notes (p. 693), to applications for fiduciary powers under recent amendment to act (p. 693), to necessary capital and surplus with relation to fiduciary powers (p. 694), to acceptances of drafts by state bank members (p. 694), to draft drawn for purpose of creating dollar exchange (p. 694,) to reasonable time for holding draft after presentment (p. 695), to advertising "clearing member" (p. 695), to limit on rediscounts (p. 696), and to purchase of "finance bills" by Federal Reserve Bank (p. 696).

The Law Department has rendered opinions on reserves of foreign branches (p. 696) and to reserves of banks in outlying districts of reserve and central reserve cities (p. 698.)

(NOTE.—The page references are to our Federal Reserve Act Service which reports all rulings and regulations of the Federal Reserve Board.)

FEDERAL TRADE COMMISSION.

Complaints have been added to the Docket since our last report (supplementary pages 68 to 76.)

(NOTE.—The page references are to our Federal Trade Commission Service.)

PUBLICATIONS.

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

THE CORPORATION JOURNAL

BULLETINS ON THE REVENUE BILL NOW BEFORE CONGRESS.

Bulletin No. 1—Series of 1918, gives a brief history of the bill, an analysis of its provisions as introduced in the House of Representatives, and a comparison of proposed rates with those in the existing law. Bulletin No. 2 summarizes the bill as passed by the House. Bulletin No. 3 will show changes suggested by the Finance Committee of the Senate. These Bulletins will be followed by others, from time to time, as the Revenue Bill is amended and finally passed. The series will be sent, without charge, to our clients and others interested.

RULES AND REGULATIONS OF THE CAPITAL ISSUES COMMITTEE

appointed under the War Finance Corporation Act have been published by us in a pamphlet which in addition contains the text of the Act and a complete index.

WAR REVENUE ACT OF 1917 contains complete text of War Income, War Excess Profits Tax, Excise, Stamp Taxes, etc., in effect October 4, 1917.

INCOME TAX PRIMER, prepared by the Bureau of Internal Revenue and reproduced as a supplement to the Income Tax Service, 1918, of The Corporation Trust Company.

EXCESS PROFITS TAX PRIMER, prepared by the Bureau of Internal Revenue, and reproduced as a supplement to the War Tax Service, 1918, of The Corporation Trust Company.

NEW YORK STATE INCOME TAX, a pamphlet containing the text of the law, including the important amendments of 1918, which imposes a tax of 3% on the net income of manufacturing and mercantile corporations.

FEDERAL TRADE COMMISSION ACT AND THE CLAYTON ACT are reprinted from The Corporation Trust Company's Federal Trade Commission Service.

BUSINESS CORPORATIONS UNDER THE LAWS OF DELAWARE is the title of a pamphlet containing the advantages of the law, statutory requirements and forms, including a description of shares without par value. The General Corporation Laws are published in a separate booklet.

THE LAWS OF MARYLAND relating to Business Corporations are available in pamphlet form.

THE GENERAL CORPORATION ACT OF NEW JERSEY, as published by the Department of State, may be secured at any of our offices.

BUSINESS CORPORATIONS UNDER THE LAWS OF MAINE is the title of a pamphlet which contains a description of advantages of incorporation under Maine laws, features of shares without par value, statutory requirements and forms.

THE CORPORATION JOURNAL

The text of the statutes relating to business corporations is also available in a separate pamphlet.

NEW YORK NON-PAR VALUE LAW, a reprint of Corporation Journal No. 35, contains a copy of the New York non-par value law and a copy of the certificate of incorporation of the Wisconsin Edison Company, the first large company incorporated thereunder.

EXTRACTS FROM THE STATUTES OF THE VARIOUS STATES RELATING TO THE ADMISSION OF FOREIGN BUSINESS CORPORATIONS. May be had by counsel who are interested in the qualification of a particular corporation in a State or group of States. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the States under consideration.

SOME IMPORTANT MATTERS FOR DECEMBER AND JANUARY.

This calendar does not purport to cover general taxes or reports to other than State officials or those we have been officially advised are not required to be filed. The State Report and Tax Service maintained by The Corporation Trust Company System sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

ALABAMA	Annual franchise tax payable January 1—Domestic and Foreign Corporations. Annual fee for permit to do business payable January 1—Foreign Corporations.
ALASKA	Annual license fee due on or before January 1—Domestic and Foreign Corporations. Annual applications for licenses on certain occupations due on or before January 15—Domestic and Foreign Corporations and persons.
CALIFORNIA	Annual license tax due between January 1 and 1st Monday of February—Domestic and Foreign Corporations. Capital stock affidavit due between January 1st and 1st Monday of February—Foreign Corporations.
DELAWARE	Annual franchise tax return due on or before the first Tuesday in January—Domestic Corporations.
GEORGIA	Annual franchise tax due on or before January 1—Domestic and Foreign Corporations. Registration statement and franchise tax due on or before January 1st.

**SOME IMPORTANT MATTERS FOR DECEMBER
AND JANUARY—Continued**

INDIANA	Annual report due during January—Domestic Corporations.
KENTUCKY	Annual report due on or before February 1st—Domestic and Foreign Corporations.
MICHIGAN	Annual report due in January or February—Domestic and Foreign Corporations.
MISSOURI	Annual capital stock report due on or before February 1st—Domestic and Foreign Corporations.
NEW YORK	Annual franchise tax payable on or before January 15th—Domestic and Foreign Corporations, excluding mercantile and manufacturing companies. Capital stock report due between November 1 and December 15—Domestic and Foreign Corporations. Annual franchise tax on income of manufacturing and mercantile corporations due between November 1 and January 1—Domestic and Foreign manufacturing and mercantile Corporations.
PENNSYLVANIA	Capital stock report } due between January 1st and February Corporate loan report } 28th—Domestic and Foreign Corporations. Bonus report due between January 1st and February 28—Foreign Corporations.
SOUTH CAROLINA	Annual report due during January—Foreign Corporations
SOUTH DAKOTA	Annual capital stock report due during January—Foreign Corporations.
TEXAS	Annual capital stock report due during January—Foreign Corporations.
UTAH	Corporation license tax due between November 15 and December 15—Domestic and Foreign Corporations.
WISCONSIN	Income tax return due between January 1 and date fixed annually by State Tax Commissioner—Domestic and Foreign Corporations. State income tax due during January—Domestic and Foreign Corporations.

Why Do Corporations Appoint Transfer Agents and Registrars?

"Appointing transfer agents and registrars" are means a corporation adopts to certify the issuance of shares of stock, bonds, notes, or other written evidences of outstanding securities or obligations, and, therefore, but an additional check to prevent over-issue, or fraudulent duplication, or any falsification of evidence as to the truth of a certificate of a share of stock or registered bond which may fall into the hands of an innocent purchaser for value. A corporation does this for its protection against fraud, for the conserving of its property, and to facilitate transfers at markets distant from its home office. Moreover, the delegation of this work to responsible, experienced and properly equipped organizations reduces the risks of legal liability and litigation." ("Trust Company Law", page 129.)

The facilities offered by this company as transfer agent and registrar are unexcelled in quality and are moderate in cost.

THE CORPORATION TRUST COMPANY

37 WALL STREET, NEW YORK

